

HUMAN SERVICES BOARD

DISCUSSION

The matter was set for hearing on April 20, 2001. At that time the parties agreed that the petitioner's original appeal was moot in that the petitioner's conditional license had since expired on its own terms on December 31, 2000. The parties

informed the hearing officer that sometime after December 31, 2000 the petitioner had filed a new application for full licensure of the facility, and the Department had denied this subsequent application on April 13, 2001, and that the petitioner intended to appeal that decision.

The Board received the petitioner's appeal of the Department's denial of her application for a license on April 24, 2001. The case has been assigned a separate docket number and is set for hearing on May 18, 2001.

In the meantime, the Department has allegedly taken steps to transfer some or all of the residents from the petitioner's facility based on the fact that the facility is currently unlicensed. The petitioner has filed this motion to enjoin or stay that action. The petitioner continues to operate the facility.

ORDER

The petitioner's Motion is denied.

REASONS

Putting aside the question of the Board's authority to grant preliminary injunctive relief, it cannot be concluded that the petitioner has demonstrated that she is facing immediate and

irreparable harm as a result of the Department's alleged efforts to transfer residents from her facility. Those residents have their own statutory rights to prior notice and appeal before any transfers can take place.¹ The petitioner does not have standing to seek relief in their stead.

Also, as noted above, the petitioner continues to operate the facility. If the Department were to take legal action to close the facility the Department's statutory remedies provide the petitioner with all the rights and defenses available under the Vermont Rules of Civil Procedure.² Thus, there is no compelling basis for the Board to consider interim relief in this matter.

#

¹ See 33 V.S.A. §§ 7111(f) and 7118(b).

² See 33 V.S.A. §§ 7111(g)-(i).